

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 2260

To provide conditions for renewing nondiscriminatory (most-favored-nation) treatment for the People's Republic of China.

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## IN THE SENATE OF THE UNITED STATES

JULY 1 (legislative day, JUNE 7), 1994

Mr. MITCHELL (for himself, Mr. LEAHY, Mr. WELLSTONE, Mr. FEINGOLD, Mr. KENNEDY, Mr. DECONCINI, Mr. METZENBAUM, Mr. SARBANES, Mr. MACK, Mr. LEVIN, and Mr. HELMS) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To provide conditions for renewing nondiscriminatory (most-favored-nation) treatment for the People's Republic of China.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “United States-China  
5       Act of 1994”.

6       **SEC. 2. FINDINGS AND POLICY.**

7       (a) FINDINGS.—The Congress makes the following  
8       findings:

1           (1) In Executive Order 12850, dated May 28,  
2           1993, the President established conditions for re-  
3           newing most-favored-nation treatment for the Peo-  
4           ple's Republic of China in 1994.

5           (2) The Executive order requires that in rec-  
6           ommending the extension of most-favored-nation  
7           trade status to the People's Republic of China for  
8           the 12-month period beginning July 3, 1994, the  
9           Secretary of State shall not recommend extension  
10          unless the Secretary determines that such extension  
11          substantially promotes the freedom of emigration ob-  
12          jectives contained in section 402 of the Trade Act of  
13          1974 (19 U.S.C. 2432) and that China is complying  
14          with the 1992 bilateral agreement between the  
15          United States and China concerning export to the  
16          United States of products made with prison labor.

17          (3) The Executive order further requires that in  
18          making the recommendation, the Secretary of State  
19          shall determine if China has made overall significant  
20          progress with respect to—

21                 (A) taking steps to begin adhering to the  
22                 Universal Declaration of Human Rights;

23                 (B) releasing and providing an acceptable  
24                 accounting for Chinese citizens imprisoned or  
25                 detained for the nonviolent expression of their

1 political and religious beliefs, including such ex-  
2 pressions of beliefs in connection with the De-  
3 mocracy Wall and Tiananmen Square move-  
4 ments;

5 (C) ensuring humane treatment of pris-  
6 oners, and allowing access to prisons by inter-  
7 national humanitarian and human rights orga-  
8 nizations;

9 (D protecting Tibet's distinctive religious  
10 and cultural heritage; and

11 (E) permitting international radio and tele-  
12 vision broadcasts into China.

13 (4) The Executive order requires the executive  
14 branch to resolutely pursue all legislative and execu-  
15 tive actions to ensure that China abides by its com-  
16 mitments to follow fair, nondiscriminatory trade  
17 practices in dealing with United States businesses  
18 and adheres to the Nuclear Nonproliferation Treaty,  
19 the Missile Technology Control Regime guidelines  
20 and parameters, and other nonproliferation commit-  
21 ments.

22 (5) The Government of the People's Republic of  
23 China, a member of the United Nations Security  
24 Council obligated to respect and uphold the United  
25 Nations charter and Universal Declaration of

1 Human Rights, has over the past year made less  
2 than significant progress on human rights. The Peo-  
3 ple's Republic of China has released only a few  
4 prominent political prisoners and continues to violate  
5 internationally recognized standards of human rights  
6 by arbitrary arrests and detention of persons for the  
7 nonviolent expression of their political and religious  
8 beliefs.

9 (6) The Government of the People's Republic of  
10 China has not allowed humanitarian and human  
11 rights organizations access to prisons.

12 (7) The Government of the People's Republic of  
13 China has refused to meet with the Dalai Lama, or  
14 his representative, to discuss the protection of Ti-  
15 bet's distinctive religious and cultural heritage.

16 (8) It continues to be the policy and practice of  
17 the Government of the People's Republic of China to  
18 control all trade unions and suppress and harass  
19 members of the independent labor union movement.

20 (9) The Government of the People's Republic of  
21 China continues to restrict the activities of accred-  
22 ited journalists and Voice of America broadcasts.

23 (10) The People's Republic of China's defense  
24 industrial trading companies and the People's Lib-  
25 eration Army engage in lucrative trade relations

1 with the United States and operate lucrative com-  
2 mercial businesses within the United States. Trade  
3 with and investments in the defense industrial trad-  
4 ing companies and the People's Liberation Army are  
5 contrary to the national security interests of the  
6 United States.

7 (11) The President has conducted an intensive  
8 high-level dialogue with the Government of the Peo-  
9 ple's Republic of China, including meeting with the  
10 President of China, in an effort to encourage that  
11 government to make significant progress toward  
12 meeting the standards contained in the Executive  
13 order for continuation of most-favored-nation treat-  
14 ment.

15 (12) The Government of the People's Republic  
16 of China has not made overall significant progress  
17 with respect to the standards contained in the Presi-  
18 dent's Executive Order 12850, dated May 28, 1993.

19 (b) POLICY.—It is the policy of the Congress that,  
20 since the President has recommended the continuation of  
21 the waiver under section 402(d) of the Trade Act of 1974  
22 for the People's Republic of China for the 12-month period  
23 beginning July 3, 1994, such waiver shall not provide for  
24 extension of nondiscriminatory trade treatment to goods  
25 that are produced, manufactured, or exported by the Peo-

1 ple's Liberation Army or Chinese defense industrial trad-  
 2 ing companies or to nonqualified goods that are produced,  
 3 manufactured, or exported by state-owned enterprises of  
 4 the People's Republic of China.

5 **SEC. 3. LIMITATIONS ON EXTENSION OF NONDISCRIM-**  
 6 **INATORY TREATMENT.**

7 (a) IN GENERAL.—Notwithstanding any other provi-  
 8 sion of law—

9 (1) if nondiscriminatory treatment is not grant-  
 10 ed to the People's Republic of China by reason of  
 11 the enactment into law of a disapproval resolution  
 12 described in subsection (b)(1), nondiscriminatory  
 13 treatment shall—

14 (A) continue to apply to any good that is  
 15 produced or manufactured by a person that is  
 16 not a state-owned enterprise of the People's Re-  
 17 public of China, but

18 (B) not apply to any good that is pro-  
 19 duced, manufactured, or exported by a state-  
 20 owned enterprise of the People's Republic of  
 21 China,

22 (2) if nondiscriminatory treatment is granted to  
 23 the People's Republic of China for the 12-month pe-  
 24 riod beginning on July 3, 1994, such nondiscrim-  
 25 inatory treatment shall not apply to—

1 (A) any good that is produced, manufac-  
2 tured, or exported by the People's Liberation  
3 Army or a Chinese defense industrial trading  
4 company, or

5 (B) any nonqualified good that is pro-  
6 duced, manufactured, or exported by a state-  
7 owned enterprise of the People's Republic of  
8 China, and

9 (3) if nondiscriminatory treatment is or is not  
10 granted to the People's Republic of China, the Sec-  
11 retary of the Treasury should consult with leaders of  
12 American businesses having significant trade with or  
13 investment in the People's Republic of China, to en-  
14 courage them to adopt a voluntary code of conduct  
15 that—

16 (A) follows internationally recognized  
17 human rights principles,

18 (B) ensures that the employment of Chi-  
19 nese citizens is not discriminatory in terms of  
20 sex, ethnic origin, or political belief,

21 (C) ensures that no convict, forced, or in-  
22 dentured labor is knowingly used,

23 (D) recognizes the rights of workers to  
24 freely organize and bargain collectively, and

1 (E) discourages mandatory political indoc-  
2 trination on business premises.

3 (b) DISAPPROVAL RESOLUTION.—

4 (1) IN GENERAL.—For purposes of this section,  
5 the term “resolution” means only a joint resolution  
6 of the two Houses of Congress, the matter after the  
7 resolving clause of which is as follows: “That the  
8 Congress does not approve the extension of the au-  
9 thority contained in section 402(c) of the Trade Act  
10 of 1974 recommended by the President to the Con-  
11 gress on \_\_\_\_\_ with respect to  
12 the People’s Republic of China because the Congress  
13 does not agree that the People’s Republic of China  
14 has met the standards described in the President’s  
15 Executive Order 12850, dated May 28, 1993.”, with  
16 the blank space being filled with the appropriate  
17 date.

18 (2) APPLICABLE RULES.—The provisions of  
19 sections 153 (other than paragraphs (3) and (4) of  
20 subsection (b)) and 402(d)(2) (as modified by this  
21 subsection) of the Trade Act of 1974 shall apply to  
22 a resolution described in paragraph (1).

23 (c) DETERMINATION OF STATE-OWNED ENTER-  
24 PRISES AND CHINESE DEFENSE INDUSTRIAL TRADING  
25 COMPANIES.—



1           (1) IN GENERAL.—Subject to paragraphs (2)  
2           and (3), not later than 90 days after the date of the  
3           enactment of this Act, the Secretary of the Treasury  
4           shall determine which persons are state-owned enter-  
5           prises of the People’s Republic of China and which  
6           persons are Chinese defense industrial trading com-  
7           panies for purposes of this Act. The Secretary shall  
8           publish a list of such persons in the Federal Reg-  
9           ister.

10          (2) PUBLIC HEARING.—

11                (A) GENERAL RULE.—Before making the  
12                determination and publishing the list required  
13                by paragraph (1), the Secretary of the Treasury  
14                shall hold a public hearing for the purpose of  
15                receiving oral and written testimony regarding  
16                the persons to be included on the list.

17                (B) ADDITIONS AND DELETIONS.—The  
18                Secretary of the Treasury may add or delete  
19                persons from the list based on information  
20                available to the Secretary or upon receipt of a  
21                request containing sufficient information to  
22                take such action.

23          (3) DEFINITIONS AND SPECIAL RULES.—For  
24                purposes of making the determination required by  
25                paragraph (1), the following definitions apply:

1 (A) CHINESE DEFENSE INDUSTRIAL TRAD-  
2 ING COMPANY.—The term “Chinese defense in-  
3 dustrial trading company”—

4 (i) means a person that is—

5 (I) engaged in manufacturing,  
6 producing, or exporting, and

7 (II) affiliated with or owned, con-  
8 trolled, or subsidized by the People’s  
9 Liberation Army, and

10 (ii) includes any person identified in  
11 the United States Defense Intelligence  
12 Agency publication numbered VP-1920-  
13 271-90, dated September 1990.

14 (B) PEOPLE’S LIBERATION ARMY.—The  
15 term “People’s Liberation Army” means any  
16 branch or division of the land, naval, or air  
17 military service or the police of the Government  
18 of the People’s Republic of China.

19 (C) STATE-OWNED ENTERPRISE OF THE  
20 PEOPLE’S REPUBLIC OF CHINA.—(i) The term  
21 “state-owned enterprise of the People’s Repub-  
22 lic of China” means a person who is affiliated  
23 with or wholly owned, controlled, or subsidized  
24 by the Government of the People’s Republic of  
25 China and whose means of production, prod-

1           ucts, and revenues are owned or controlled by  
2           a central or provincial government authority. A  
3           person shall be considered to be state-owned  
4           if—

5                   (I) the person's assets are primarily  
6                   owned by a central or provincial govern-  
7                   ment authority;

8                   (II) a substantial proportion of the  
9                   person's profits are required to be submit-  
10                  ted to a central or provincial government  
11                  authority;

12                  (III) the person's production, pur-  
13                  chases of inputs, and sales of output, in  
14                  whole or in part, are subject to state, sec-  
15                  toral, or regional plans; or

16                  (IV) a license issued by a government  
17                  authority classifies the person as state-  
18                  owned.

19           (ii) Any person that—

20                   (I) is a qualified foreign joint venture  
21                   or is licensed by a governmental authority  
22                   as a collective, cooperative, or private en-  
23                   terprise; or

24                   (II) is wholly owned by a foreign per-  
25                  son,

1 shall not be considered to be state-owned.

2 (D) QUALIFIED FOREIGN JOINT VEN-  
3 TURE.—The term “qualified foreign joint ven-  
4 ture” means any person—

5 (i) which is registered and licensed in  
6 the agency or department of the Govern-  
7 ment of the People’s Republic of China  
8 concerned with foreign economic relations  
9 and trade as an equity, cooperative, con-  
10 tractual joint venture, or joint stock com-  
11 pany with foreign investment;

12 (ii) in which the foreign investor part-  
13 ner and a person of the People’s Republic  
14 of China share profits and losses and joint-  
15 ly manage the venture;

16 (iii) in which the foreign investor  
17 partner holds or controls at least 25 per-  
18 cent of the investment and the foreign in-  
19 vestor partner is not substantially owned  
20 or controlled by a state-owned enterprise of  
21 the People’s Republic of China;

22 (iv) in which the foreign investor part-  
23 ner is not a person of a country the gov-  
24 ernment of which the Secretary of State  
25 has determined under section 6(j) of the

1           Export Administration Act of 1979 (50  
2           U.S.C. App. 2405(j)) to have repeatedly  
3           provided support for acts of international  
4           terrorism; and

5           (v) which does not use state-owned  
6           enterprises of the People's Republic of  
7           China to export its goods or services.

8           (E) PERSON.—The term “person” means  
9           a natural person, corporation, partnership, en-  
10          terprise, instrumentality, agency, or other en-  
11          tity.

12          (F) FOREIGN INVESTOR PARTNER.—The  
13          term “foreign investor partner” means—

14               (i) a natural person who is not a citi-  
15               zen of the People's Republic of China; and

16               (ii) a corporation, partnership, instru-  
17               mentality, enterprise, agency, or other en-  
18               tity that is organized under the laws of a  
19               country other than the People's Republic  
20               of China and 50 percent or more of the  
21               outstanding capital stock or beneficial in-  
22               terest of such entity is owned (directly or  
23               indirectly) by natural persons who are not  
24               citizens of the People's Republic of China.

1 (G) NONQUALIFIED GOOD.—The term  
2 “nonqualified good” means a good to which  
3 chapter 39, 44, 48, 61, 62, 64, 70, 73, 84, 93,  
4 or 94 of the Harmonized Tariff Schedule of the  
5 United States applies.

6 (H) CONVICT, FORCED, OR INDENTURED  
7 LABOR.—The term “convict, forced, or inden-  
8 tured labor” has the meaning given such term  
9 by section 307 of the Tariff Act of 1930 (19  
10 U.S.C. 1307).

11 (I) VIOLATIONS OF INTERNATIONALLY  
12 RECOGNIZED STANDARDS OF HUMAN RIGHTS.—  
13 The term “violations of internationally recog-  
14 nized standards of human rights” includes but  
15 is not limited to, torture, cruel, inhuman, or de-  
16 grading treatment or punishment, prolonged de-  
17 tention without charges and trial, causing the  
18 disappearance of persons by abduction and  
19 clandestine detention of those persons, secret  
20 judicial proceedings, and other flagrant denial  
21 of the right to life, liberty, or the security of  
22 any person.

23 (J) MISSILE TECHNOLOGY CONTROL RE-  
24 GIME.—The term “Missile Technology Control  
25 Regime” means the agreement, as amended, be-

1           tween the United States, the United Kingdom,  
2           the Federal Republic of Germany, France,  
3           Italy, Canada, and Japan, announced on April  
4           16, 1987, to restrict sensitive missile-relevant  
5           transfers based on an annex of missile equip-  
6           ment and technology.

7           (d) SEMIANNUAL REPORTS.—The Secretary of the  
8 Treasury shall, not later than 6 months after the date of  
9 the enactment of this Act, and the end of each 6-month  
10 period occurring thereafter, report to the Congress on the  
11 efforts of the executive branch to carry out subsection (c).  
12 The Secretary may include in the report a request for ad-  
13 ditional authority, if necessary, to carry out subsection (c).  
14 In addition, the report shall include information regarding  
15 the efforts of the executive branch to carry out subsection  
16 (a)(3).

17 **SEC. 4. PRESIDENTIAL WAIVER.**

18           The President may waive the application of any con-  
19 dition or prohibition imposed on any person pursuant to  
20 this Act, if the President determines and reports to the  
21 Congress that the continued imposition of the condition  
22 or prohibition would have a serious adverse effect on the  
23 vital national security interests of the United States.

1 **SEC. 5. REPORT BY THE PRESIDENT.**

2 If the President recommends in 1995 that the waiver  
3 referred to in section 2 be continued for the People's Re-  
4 public of China, the President shall state in the document  
5 required to be submitted to the Congress by section 402(d)  
6 of the Trade Act of 1974, the extent to which the Govern-  
7 ment of the People's Republic of China has made progress  
8 during the period covered by the document, with respect  
9 to—

10 (1) adhering to the provisions of the Universal  
11 Declaration of Human Rights,

12 (2) ceasing the exportation to the United States  
13 of products made with convict, force, or indentured  
14 labor,

15 (3) ceasing unfair and discriminatory trade  
16 practices which restrict and unreasonably burden  
17 American business, and

18 (4) adhering to the guidelines and parameters  
19 of the Missile Technology Control Regime, the con-  
20 trols adopted by the Nuclear Suppliers Group, and  
21 the controls adopted by the Australia Group.

22 **SEC. 6. SANCTIONS BY OTHER COUNTRIES.**

23 If the President decides not to seek a continuation  
24 of a waiver in 1995 for the People's Republic of China  
25 under section 402(d) of the Trade Act of 1974, the Presi-  
26 dent shall, during the 30-day period beginning on the date



1 that the President would have recommended to the Con-  
2 gress that such a waiver be continued, undertake efforts  
3 to ensure that members of the General Agreement on Tar-  
4 iffs and Trade take a similar action with respect to the  
5 People's Republic of China.

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